

APR 28 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: STAHL, Bronislaw-Jan
 Serial No.: 09/23,425
 Filed: 09/23/2001
 For: A COATED CHEWING GUM, A METHOD FOR PREPARATION...
 Confirmation No.: 5625

Art Unit: 1761
 Examiner: HENDRICKS, K.
 Washington, D.C.
 Atty.'s Docket: STAHL=1
 Date: April 28, 2004

U.S. Patent and Trademark Office
 2011 South Clark Place
 Customer Window
 Crystal Plaza Two, Lobby, Room 1B03
 Arlington, Virginia 22202
 Sir:

Transmitted herewith is an ☐ Amendment ☒ Election with Traverse in the above-identified application.
☐ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted.
☐ Small entity status of this application under 37 CFR 1.9 and 1.27 has been previously asserted.
☐ A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.
☐ No additional fee is required.

The fee has been calculated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)		Small Entity		Other Than a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra		Rate	Additional Fee	Rate	Additional Fee
Total		Minus		0		x 9	\$	x18	\$
Indep.		Minus		0		x43	\$	x86	\$
First Presentation of Multiple Dependent Claim						145	\$	+290	\$
TOTAL ADDITIONAL CLAIMS FEE							\$	Total	\$

- * If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
 ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.
 *** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col.1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time

If any extension of time for a response is required applicant requests that this be considered a petit

☒ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity		Other Than Small Entity	
Response Filed Within		Response Filed Within	
<input type="checkbox"/> First	\$ 55.00	<input type="checkbox"/> First	\$ 110.00
<input type="checkbox"/> Second	\$ 210.00	<input type="checkbox"/> Second	\$ 420.00
<input type="checkbox"/> Third	\$ 475.00	<input type="checkbox"/> Third	\$ 950.00
<input type="checkbox"/> Fourth	\$ 740.00	<input checked="" type="checkbox"/> Fourth	\$ 1480.00
<input type="checkbox"/> Fifth	\$ 1005.00	<input type="checkbox"/> Fifth	\$ 2010.00

☐ Less fees (\$) already paid for months extension of time on .

☐ Please charge my Deposit Account No. 02-4035 in the amount of \$. A duplicate copy of this sheet is attached.

☐ A check in the amount of \$ is attached (check no.).

☒ Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$1,480.00 is attached.

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR Section 1.16 and all patent processing fees under 37 CFR Section 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR Section 1.18.

BROWDY AND NEIMARK, P.L.L.C.
 Attorneys for Applicant(s)

Facsimile: (202) 737-3528
 Telephone: (202) 628-5197

04/30/2004 FNETEKI1 00000002 09623425

01 FC:1254

By: 1480.00 DP
 IVER P. COOPER
 Registration No. 28,005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Art Unit: 1761
)	
STAHL, Bronislaw-Jan)	Examiner: HENDRICKS, K.
)	
Serial No.: 09/623,425)	Washington, D.C.
)	
Filed: March 26, 2001)	April 28, 2004
)	
For: A COATED CHEWING GUM, A)	Docket No.: STAHL=1
METHOD FOR PREPARATION)	
THEREOF AND THE USE OF...)	Confirmation No.: 5625

ELECTION WITH TRAVERSE

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, Virginia 22202

S i r :

1. The species restriction mailed December 9, 2003, nominally requires us to elect one of newly defined species A-C:

- A. The use of an encapsulated flavor component (containing any type of flavor), recited as option (a); Corresponding to claim 43.
- B. The use of "a natural vegetable flavoring agent" recited as option (b); Corresponding to claims 33-41.
- C. The use of both an encapsulated flavor component and "a natural vegetable flavoring agent"; Corresponding to claim 32.

However, the Examiner declares that we have constructively elected originally presented species B, and hence that we are compelled to elect species B.

2. Applicants request the examiner to exercise his discretion and permit a shift to species A.

If the examiner does not withdraw the holding of constructive election, and is not willing to permit a shift, then Applicants elect species B with traverse.

USSN - 09/623,425

3. MPEP §819.01 authorizes the Examiner to permit a shift in election. We believe that a shift should be permitted for the following reasons:

(1) the instant restriction requirement is the first restriction in the case, and hence Applicants had no reason to expect that the instant claims would be deemed to cover an unelected invention;

(2) some of the subject matter of species A was covered by previously presented claim 16 (encapsulated natural vegetable flavors), which the Examiner must have searched and examined.

(3) original PCT claim 22 was directed to the coated chewing gum wherein the active substances, which could be other kinds of flavors, were in encapsulated form.

4. In any event, the species restriction is traversed on the ground that one or more of generic claims 31, 42, 44-54 and 55-59 are allowable.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 

Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202)628-5197
Facsimile: (202)737-3528
IPC:lms
G:\ipc\n-q\Plou\stahl1\pto election.wpd